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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/754,831  | 01/03/2001  | Hermann Oppermann    | STK-008CN           | 3498             |
| 21323   | 7590        | 03/24/2005           | EXAMINER            |                  |
| TESTA, HURWITZ & THIBEAULT, LLP<br>HIGH STREET TOWER<br>125 HIGH STREET<br>BOSTON, MA 02110 |             |                      | KEMMERER, ELIZABETH |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1646                |                  |

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/754,831

Applicant(s)

OPPERMANN ET AL.

Examiner

Elizabeth C. Kemmerer, Ph.D.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 81-83 and 87-91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 81-83 and 87-91 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Application, Amendments, And/Or Claims***

The amendment received 07 January 2005 has been entered in full. Claims 1-80 and 84-86 are canceled. Claims 81-83 and 87-91 are under examination.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Withdrawn Objections And/Or Rejections***

The application is now fully in compliance with the sequence rules.

The objection to the specification for informalities as set forth at p. 3 of the previous Office Action (mailed 04 October 2004) is *withdrawn* in view of the amendments correcting the same (amendment received 07 January 2005).

The objection to claims 87-91 for informalities as set forth at p. 4 of the previous Office Action (mailed 04 October 2004) is *withdrawn* in view of the amended claims (amendment received 07 January 2005).

The rejection of claims 83, 85, 87-89 and 91 under 35 U.S.C. § 112, second paragraph, as set forth at pp. 4-5 of the previous Office Action (mailed 04 October 2004) is *withdrawn* in view of the amended claims (amendment received 07 January 2005).

### ***Double Patenting***

Claims 81-83 and 87-91 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over:

- 1) claims 1-3 of U.S. Patent No. 6,261,835;
- 2) claims 11, 30, and 34 of U.S. Patent No. 6,071,695;
- 3) claims 1-6, 9-18, 26-41, and 43-47 of U.S. Patent No. 5,863,758;
- 4) claims 20 and 22 of U.S. Patent No. 5,712,119;
- 5) claims 1-13 of U.S. Patent No. 5,670,336;
- 6) claims 1-21 of U.S. Patent No. 5,652,118;
- 7) claims 16-19 and 21 of U.S. Patent No. 5,614,385; and
- 8) claims 18-20, 22, 24, 53-55, 57, and 59 of U.S. Patent No. 5,585,237

for reasons of record as set forth at pp. 5-8 of the previous Office Action (mailed 04 October 2004).

Applicant's request (p. 9, amendment received 07 January 2005) to hold the rejections in abeyance until the indication of otherwise allowable subject matter is acknowledged. Since the double patenting rejections are the only issues remaining in this application, Applicant must either traverse the double patenting rejections or submit appropriate terminal disclaimers in response to this Office Action in order to be fully responsive.

### ***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth C. Kemmerer, Ph.D. whose telephone number is (571) 272-0874. The examiner can normally be reached on Monday through Thursday, 7:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, Ph.D. can be reached on (571) 272-0829. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ECK

*Elizabeth C. Kemmerer*

EXAMINER'S SIGNATURE